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To: Microsoft ATR
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Subject: Proposed Settlement

To whom it may concern

I refer you to this article about the Microsofts proposed private settlement.

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Whatever you think about Microsoft, you have to give them credit. I mean, who else could turn a billion-dollar "gift to education" into an anti-competitive business practice?

That's what Apple says Microsoft is doing--using its "generosity" to horn in on Apple's education business--and they're right.

Look at it from a distance, and the deal looks pretty good. A raft of people are suing Microsoft on various antitrust grounds. The cases have all been glommed together, and a single settlement proposal is before a federal judge in Baltimore. The judge has to decide whether it's a good deal.

THE PLAINTIFFS' LAWYERS have done a good job of finding a settlement that seems to work for everyone. In an unusual move, they have even agreed to allow the judge to decide what their fees should be. They've managed to do something the Justice Department wasn't able to in its proposed settlement: essentially, fine Microsoft a billion dollars (which is real money, even to Microsoft) for its past transgressions.

And they have tried to do it in a socially redeeming way, by having the money go to poor schools.

Now I am sure the people on both sides of the table who crafted the agreement--and see it as a big win for education--must be feeling right now that no good deed goes unpunished. But their good deed must be modified.

APPLE HAS FOUGHT in the education-market trenches for many years. The company has had its ups and downs, but recently has seen some improvement. It would be terribly unfair for a court to order Microsoft to drop a cool billion into the education space. Even if it isn't money that would have been spent anyway, it would greatly enhance Microsoft's presence in education. Children who might otherwise see a Mac might now see a Windows machine.

Teachers, who've forgotten that this is a legal settlement and not a gift

from the goodness of Redmond's heart, might recommend Windows machines to parents. In fact, after about a year, everyone would forget Microsoft wasn't doing this entirely voluntarily, and the company would reap a PR bonanza.

That is way too close to allowing Microsoft to profit from its crimes for my taste, especially when it also has the effect of challenging Apple in one of the Macintosh's few major market segments. If Microsoft wants to do this on their own, we can't (and shouldn't) stop them, but it's just too much to consider the further nuking of Microsoft competitors as a socially redeeming activity.

I HATE TO SAY THIS--as I am also sensitive to the good an extra billion (over five years) could do for bringing technology into schools--but the money simply can't be spent that way. If we want to be fair to Apple while still having Microsoft pay penance, the money needs to go to some other public or charitable purpose.

In fact, education is about the only place it shouldn't go. Let Microsoft donate the hardware and software needed to support the fight against terrorism here at home. Most police departments and emergency service agencies need the technology almost as much as schools--actually more so, in some cases--and that, at least, wouldn't be money taken out of Apple's pockets. Rather, Microsoft would be giving money to agencies that have probably already standardized on Windows, but just can't afford to buy very often.

I got an e-mail from a reader who has an alternative solution: let the money be used by education, but only to purchase Apple or Linux software and systems. That strikes me as perverse, but in some ways fitting. More reasonably, the money might be required to be spent in a manner that reflects current market share--so Apple gets the share it presumably would have gotten if Microsoft hadn't been the source of the cash.

Like I said, you've got to give Microsoft credit--they certainly play all the angles. It's just a part of the company's corporate soul--sometimes for better and, sometimes, for worse.